

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

60384

FILE: B-185530

DATE: January 14, 1976

MATTER OF: Franklin Industries

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DIGEST:

Rescission of sales contract for surplus property approved where bid was almost 400 percent above current market appraisal, more than 30 percent above acquisition cost, and more than 15 percent higher than next highest bid, since in such circumstances contracting officer is charged with constructive notice of possibility of error and failed to request verification.

Sale No. 27-6021 was issued by the Defense Property Disposal Service, Defense Supply Agency, for the sale of surplus machine tools and shop equipment. The contracting activity requests that the contract (27-6021-326) awarded Franklin Industries on item No. 120 of this sale be rescinded inasmuch as it believes that the contracting officer was on constructive notice of the mistake in bid alleged by Franklin after award.

Twenty bids were received on item No. 120. These ranged from the successful bid of \$7,157 to \$1.00. The second, third, and fourth high bids were \$6,106, \$4,650, and \$3,167.99, respectively. The acquisition cost of the item (one turret lathe described as used, in fair condition, and in need of repairs) was \$5,443; its appraised current market value was \$1,800. Franklin contends that it intended to bid \$2,557.

The contracting activity states that it does not believe the fact that the bid price of Franklin exceeded the acquisition cost of the item placed the contracting officer on constructive notice of a mistake in bid since prices bid on machinery sales, in most instances, substantially exceed the acquisition costs of each item. However, it does believe that because the total bid price shown on the face of the bid sheet did not reflect the sum of the individual bids the contracting officer should have discovered this discrepancy and should have requested verification prior to award of all bid prices submitted by Franklin.

The general principle applicable to this case is that a purchaser's unilateral mistake in bid will not excuse him from a contract subsequently awarded unless the contracting officer knew or should have known of the mistake. Corbin on Contracts § 610; Wender Presses, Inc. v. United States, 343 F.2d 961 (Ct. Cl. 1965); Saligman v. United States, 56 F. Supp. 505 (E.D. Penn., 1944); Kemp v. United States, 38 F. Supp. 568 (D. Md., 1941). There is no evidence in the present record to indicate that the contracting officer had actual knowledge of error. As to when the contracting officer should be charged with constructive notice of error, the test is one of reasonableness; whether under the facts of the case there were any factors which should have raised the possibility of error in the mind of the contracting officer. See Acme Refining-Smelting Company, B-181967, August 20, 1974, 74-2 CPD 113. The possibility of error must be sufficient to reasonably require the contracting official to make inquiry, which inquiry would lead to the requisite knowledge. See Wender Presses, Inc. v. United States, supra.

A close scrutiny of the highest bid received prior to the making of an award is a required procedure to insure that the high bid is "not so far in excess of" the next highest bid or of the current appraisal as to indicate a mistake. Part 3, chapter VIII, paragraph F 3.e. of the Defense Disposal Manual (Defense Supply Agency Manual 4160.21-m, March 21, 1967). The above-cited paragraph does not define the term "not so far in excess of" nor does it describe any ratio at which the high bid should be regarded as so far in excess of the second highest bid or of the current market appraisal as to require verification. While a wide range of variation among the bids for surplus property or a bid price "far in excess" of the current market appraisal does not necessarily establish the reasonable possibility of error, because of the many possible intended uses of the property known only to the particular bidder, each case must be examined on its merits.

In the instant case, Franklin's bid for the item was almost 400 percent above the current market appraisal, more than 30 percent above the acquisition cost, and more than 15 percent higher than the next highest bid. In addition, as noted by the agency, the total bid price shown on Franklin's bid sheet did not reflect the sum of the item bid prices. In these circumstances, we believe the contracting

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officer should reasonably be charged with constructive notice of the possibility of error and should have requested verification.

Accordingly, the contract may be rescinded as administratively recommended.


Acting Comptroller General
of the United States